

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

PHILLEATRA GAYLOR (*Pro Se*),)
)
 Plaintiff,) CASE NO. 1:15-CV-185
) (Reeves/Steger)
 v.)
)
 OWEN SMITH, Circuit Librarian,)
 U.S. Court of Appeals for the Sixth Circuit;)
 CLARENCE MADDOX, Circuit Executive,)
 U.S. Court of Appeals for the Sixth Circuit;)
 MEGAN LYNNESS, Federal Property Manager,)
 U.S. General Services Administration; and)
 CLIFFORD L. MOSLEY, Representative,)
 Environmental Health Services,)
)
 Defendants.)

RESPONSE TO PLAINTIFF'S MOTION TO STRIKE

The United States of America, on behalf of Defendants Owen Smith, Circuit Librarian, U.S. Court of Appeals for the Sixth Circuit; Clarence Maddox, Circuit Executive, U.S. Court of Appeals for the Sixth Circuit; and Megan Lyness, Federal Property Manager, U.S. General Services Administration (“GSA”), by and through Nancy Stallard Harr, Acting United States Attorney for the Eastern District of Tennessee tenders this reply to Plaintiff’s Motion to Strike Responses Filed By Defendants. (Doc. No. 38).

FACTS

Plaintiff is a former employee of the Sixth Circuit Court of Appeals. Plaintiff filed this pro se complaint claiming that her termination was wrongful. Defendants filed a motion to dismiss and a supplement and Plaintiff responded and then sought and obtained permission to amend. (Doc. Nos. 34 and 36). Defendants filed replies to both motions and now Plaintiff seeks to strike those replies. (Doc. No. 38).

ARGUMENT

1. Rely briefs are allowed under the Local Rules.

Briefs filed in reply are specifically allowed under the local rules of court. Local Rule 7.1 (c). Both reply briefs filed by Defendants (Doc. Nos. 35 and 37) responded to points raised by the Plaintiff in her filings. Therefore, these filings were appropriate under the local rules of court.

2. Rule 12(f) Motions to Strike are not favored and should not be granted unless specifically provided under the Local Rules.

As noted in treatises on the subject, the courts have long disfavored striking pleadings except in limited circumstances. There should be no relief unless the movant can show direct prejudice. 5C Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 1382 (3d ed. 2004) at note 32. In the context of Rule 12(f), the pleadings in this case all revolve around one issue and so the reply briefs are not the sort of redundant claims or similar pleading misuse that Rule 12(f) is designed to prevent. A mere common fact in the issue addressed is not sufficient to justify striking a pleading. *See*, Wright & Miller, *Id*, at note 29, citing *Ruven v. Graham*, 71 F.Supp. 876, 876-877 (N.D. Ohio 1946). These replies are not so repetitive to justify the draconian penalty of striking the pleading. Rule 12(f) is designed to test a paragraph in a complaint or an answer as to one issue, not to strike an entire responsive pleading.

CONCLUSION

The Court should not strike the reply briefs filed by Defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2016, a copy of the foregoing Response was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail. Parties may access this filing through the Court's electronic filing system. Specifically, this document was sent to Plaintiff via First Class Mail, complete with adequate postage, addressed to:

Philleatra Gaylor, Pro Se
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/s/M. Kent Anderson
M. Kent Anderson
Assistant United States Attorney